

CONSENT DECREE**I. Introduction**

1. This Consent Decree is entered into by and between the Media Bureau of the Federal Communications Commission and Bilbat Radio, Inc., by their respective authorized representatives, for the purpose of resolving certain issues that have arisen in the Media Bureau's review of the pending application for the renewal of the license for Station WHHO(AM), Hornell, New York (File No. BR-20060201AMZ).

II. Definitions

2. For purposes of this Consent Decree, the following definitions shall apply:
- (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. §151 *et. seq.*;
 - (b) "Bureau" means the Media Bureau of the Federal Communications Commission;
 - (c) "Commission" or "FCC" means the Federal Communications Commission;
 - (d) "Compliance Plan" means the processes and procedures developed by the Licensee in an effort to ensure compliance with the Act and the Rules regarding the maintenance of the public file of Station WHHO(AM), as summarized in the Appendix hereto;
 - (e) "Effective Date" means the date on which the Bureau releases the Order;
 - (f) "Execution Date" means the date on which this Consent Decree is executed by the last of the Parties to do so;
 - (g) "Licensee" refers to Bilbat Radio, Inc.;
 - (h) "Order" means the order of the Bureau adopting this Consent Decree;
 - (i) "Parties" means the Bureau and the Licensee;
 - (j) "Public File Rule" means Section 73.3526 of the Commission's rules, 47 C.F.R. § 73.3526;
 - (k) "Rules" means the Commission's Rules, found in Title 47 of the Code of Federal Regulations;

- (l) “Station” means Station WHHO(AM), Hornell, New York (Facility ID No. 5308); and
- (m) “Violations” means the violations of the Public File Rule.

II. Background

3. On June 2, 2006, the Licensee filed the license renewal application for the above-listed Station.¹ In the renewal application, the Licensee made disclosures to the Bureau concerning compliance with the Commission’s Public File Rule. Because of the compliance issues raised by those disclosures, the Parties have agreed to enter into this Consent Decree to which both the Licensee and the Bureau intend to be legally bound.

IV. Agreement

4. The Parties acknowledge that any proceeding that might result from the Public File Rule compliance issues referred to in Paragraph 3 above would be time consuming and require a substantial expenditure of public and private resources. In order to conserve such resources, to resolve the matter, and to promote the Licensee’s compliance with the Public File Rule, the Parties are entering into this Consent Decree, in consideration of the mutual commitments made herein.

5. The Parties agree to be legally bound by the terms and conditions of this Consent Decree. Both the Licensee and the Bureau each represent and warrant that its signatory is duly authorized to enter into this Consent Decree on its behalf. The Licensee agrees that the Bureau has jurisdiction over the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

6. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Licensee and the Bureau concerning the Licensee’s Violations at the Station, as discussed herein.

7. In express reliance on the covenants and representations in this Consent Decree, the Bureau agrees that it will not use the Violations in any action against the Licensee, provided that the Licensee satisfies all of its obligations under this Consent Decree. In the event that the Licensee fails to satisfy any of its obligations under this Consent Decree, the Bureau may take any enforcement action available pursuant to the Act and the Rules with respect to each Violation, and/or the violation of this Consent Decree.

8. The Licensee hereby stipulates that it has violated the Public File Rule in its maintenance of the public file of the Station during the 1998-2006 license term.

¹ File No. BR-20060201AMZ.

9. The Licensee agrees to make a voluntary contribution to the United States Treasury in the amount of Ten Thousand Dollars (\$10,000.00), payable in ten (10) equal installment payments of one thousand dollars (\$1,000). The first installment payment is due within thirty (30) days after the Effective Date and the remaining nine (9) installment payments are due on the first day of each succeeding month, beginning with the second full month after the Effective Date. Such contribution will be made, without further protest or recourse to a *trial de novo*, by a check or similar instrument, payable to the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to the Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank—Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV—27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code).

10. The Bureau agrees to grant the pending renewal application for the Station (File No. BR-20060201AMZ) promptly after the Effective Date, provided that the following conditions have been met: 1) the Licensee has fully and timely satisfied its obligation to make the voluntary contribution referenced in paragraph 9 of this Decree; and 2) there are no issues other than the Violations that would preclude the grant of the renewal application. In the event that there are issues that would preclude the grant of the Assignment Application, the renewal application will remain pending.

11. The Licensee represents that, in addition to its existing policies and procedures, it has adopted, is currently in the process of implementing, and agrees to abide by the Compliance Plan for the purpose of ensuring compliance with the Public File Rule, which Compliance Plan is summarized in the Appendix attached hereto. The Licensee agrees, to the extent that it has not already done so, to implement this Compliance Plan at the Station no later than thirty (30) days after the Effective Date and to keep such Compliance Plan in effect for three (3) years after the Effective Date.

12. The Licensee represents that, as of the Execution Date of this Consent Decree, the Station’s public file fully comports with the Public File Rule.

13. The Licensee agrees that it is required to comply with each individual condition of this Consent Decree. Each specific condition is a separate condition of the Consent Decree as approved. To the extent that the Licensee fails to satisfy any condition or Commission Rule, in the absence of Commission alteration of the condition or Rule, it will be deemed noncompliant and may be subject to possible enforcement action, including, but not limited to, revocation of the relief, designation of the matter for hearing, letters of admonishment and/or forfeitures.

14. The Consent Decree will be binding on the Licensee’s successors and assigns within its term. Licensee agrees that any future application to assign the WHHO(AM) license will include an agreement executed by the proposed assignee consenting to assumption of the responsibilities and duties set forth in this Consent Decree so long as it is in effect.

15. The Licensee waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge the validity of this Consent Decree and the Order, provided the Order adopts the Consent Decree without change, addition or modification.

16. The Licensee agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. Section 504 and 47 C.F.R. Section 1.1501 *et seq.*, relating to the matters discussed in this Consent Decree.

17. The Licensee and the Bureau agree that the effectiveness of this Consent Decree is expressly contingent upon issuance of the Order, provided the Order adopts the Consent Decree without change, addition or modification.

18. The Licensee and the Bureau agree that if the Licensee, the Commission or the United States on behalf of the Commission, brings a judicial action to enforce the terms of the Order adopting this Consent Decree, neither the Licensee nor the Commission will contest the validity of the Consent Decree or Order, and the Licensee and the Commission will waive any statutory right to a *trial de novo* with respect to any matter upon which the Order is based (provided in each case that the Order is limited to adopting the Consent Decree without change, addition, or modification), and will consent to a judgment incorporating the terms of this Consent Decree.

19. The Licensee and the Bureau agree that, in the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, it will become null and void and may not be used in any manner in any legal proceeding.

20. This Consent Decree may be signed in counterparts and/or by telecopy and, when so executed, the counterparts, taken together, will constitute a legally binding and enforceable instrument whether executed by telecopy or by original signatures.

**MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION**

By: _____
Monica Shah Desai, Chief

Date: _____

BILBAT RADIO, INC.

By: _____
William H. Berry, President

Date: _____

APPENDIX**COMPLIANCE PLAN OF BILBAT RADIO, INC.**

Bilbat, Inc., or its successor-in-interest, as appropriate, will institute the following procedures to ensure compliance with the Commission's Public File Rule. Unless otherwise provided, all terms defined in the Consent Decree apply to this Compliance Plan.

- I.
 - A. The program hosts and other appropriate staff of the Station will log all broadcasts of public affairs programming. These logs will be compiled into quarterly issues/programs lists and will be timely placed in the public file of the Station.
 - B. All such quarterly issues/programs lists will be signed and dated by their preparer before they are placed in the public file.
 - C. Late-filed lists will be reviewed and signed by the Station's management and accompanied with a statement indicating the nature of the document, the date placed in the public file, and the reason for the late filing.
 - D. The Station's management will emphasize to all employees the absolute requirement to follow all Commission rules, regulations, and policies and will fully explain the obligations imposed by the Public File Rule to each employee or employees charged with maintenance of the Station's public file. Should the Station's licensee or its management learn that the Public File Rule has been violated, the employee responsible will be subject to appropriate disciplinary action, including suspension without pay and termination.
- II. For a period of three years from the Effective Date, the Licensee or successor licensee, as appropriate, will conduct in-house audits of the Station's public file as detailed below. The three-year period will terminate on the successful completion of the third annual public file audit pursuant to Item II(C). The second and third audits pursuant to Item II(C) will be due on the anniversary of the first audit. The audits of the public file shall be performed as follows:
 - A. quarterly audits, by telephone or facsimile, will be conducted by FCC counsel or an authorized representative of the New York Broadcasters Association under the Alternative Broadcast Inspection Program;
 - B. a semi-annual review will be conducted by the Station's management; and
 - C. annual, in-person, audits of the Station's public file will be conducted by an authorized representative of the New York Broadcasters Association under the alternative Broadcast Inspection Program. The first annual audit shall be completed not less than six (6) months and not more than nine (9) months following the Effective Date.

- III. The Licensee shall annually submit a sworn certification to the Commission, signed by an officer of the Licensee, that the Station's public inspection file fully complies with the Public File Rule. If the Licensee cannot truthfully make this certification, it shall set forth in detail any public file deficiencies and describe any correct measures taken. This report shall be filed within ten (10) days of the completion of the first annual public file audit pursuant to Item II(C) above, and on that date yearly thereafter during each year of the license term. A copy will be served on Peter H. Doyle, Chief, Audio Division, Media Bureau, Federal Communications Commission and e-mailed to him at peter.doyle@fcc.gov.
- IV. The Compliance Plan, set forth above, will be under the direct supervision of the Licensee's President, William H. Berry, or by any appointee designated by Mr. Berry, or in the event Mr. Berry is no longer with WHHO(AM) or the license has been assigned, by his successor or his successor's designee, as appropriate.